

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

EDWARD J. POLK)	
Claimant)	
VS.)	
)	
THE BOEING COMPANY)	Docket No. 135,970
Respondent)	
AND)	
)	
AETNA CASUALTY & SURETY COMPANY)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Claimant appeals from an Award by Administrative Law Judge John D. Clark. The Award was entered December 4, 1997, and the Appeals Board heard oral argument May 19, 1998.

APPEARANCES

Seth G. Valerius of Topeka, Kansas, appeared on behalf of claimant. Vaughn Burkholder of Wichita, Kansas, appeared on behalf of respondent and its insurance carrier. Steven L. Foulston of Wichita, Kansas, appeared on behalf of the Kansas Workers Compensation Fund.

RECORD AND STIPULATIONS

The Appeals Board has reviewed the record and adopted the stipulations listed in the Award. The Board has not considered the testimony in depositions of Dr. Kenneth D. Zimmerman, Mitchell L. Lewis, or William J. Brown as those were designated as discovery depositions and the parties did not agree to their use as evidence.

ISSUES

Was claimant's heart attack a compensable injury? The ALJ found it was not. On appeal, claimant contends the heart attack was a compensable injury because it was caused by performing work outside previously imposed work restrictions and from exposure to fumes at work.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Award should be affirmed.

Findings of Fact

1. In 1986, claimant began working as an aircraft painter at a Boeing facility in Mississippi. He developed heart problems in 1987 and was taken out of the paint shop for approximately three months beginning in March 1988. He then returned to the paint shop and worked there until September 1988 when he moved to the carpenter shop.
2. The Mississippi plant closed in 1988 and claimant transferred to the plant in Wichita, Kansas, where he started March 8, 1989.
3. While still in Mississippi, claimant began treating with Dr. Ben P. Folk III for irregular heart rhythm. During that time, claimant underwent a heart catheterization which revealed congestive cardiomyopathy, a weakening of the heart muscle.
4. When claimant transferred to Kansas, he worked a job called "light subassembly B." The duties included installing bushings using green oxide primer and, once the primer was dry, applying methyl ethyl ketone to clean the parts. The duties also required the use of a jig tool. The jigs varied in size with the heaviest 150 to 200 pounds. Several workers were used to lift the heaviest but claimant's duties required that he lift in excess of 50 pounds and occasionally that he push parts with resistance of more than 50 pounds.
5. On April 17, 1989, claimant, suffering from chest pains, sweating, and nausea, was taken from work by ambulance. Claimant suffered a heart attack and has not worked since that date.
6. The Board finds claimant's heart attack and resulting disability were not the result of unusual exertion at work. Claimant contends that his work violated recommended medical restrictions. The Board finds there was nothing unusual about the exertion level of claimant's work preceding the heart attack. It was the normal lifting and other exertion. In addition, the record does not indicate the heart attack was caused by exertion and the Board finds that it was not.

7. The Board also finds claimant's heart attack was not caused by exposure to chemicals or fumes at work. Dr. Gerald B. Lee reviewed relevant medical records and concluded chemical exposure at Boeing caused deterioration in a preexisting cardiomyopathy. However, this was the only testimony which would support that claim and, based on the record as a whole, the Board finds the opposite conclusion more probable. Although Dr. Folk testified exposure to fumes could aggravate a heart rhythm problem, he testified he could not say within a reasonable degree of medical probability that anything in claimant's work caused his heart condition to become permanently worse. Dr. Jack T. Hopkins, Jr., testified that nothing in claimant's work likely contributed significantly to his cardiac dysfunction. Dr. Roger W. Evans, a cardiologist, testified he was not aware of any literature suggesting exposure to fumes would permanently aggravate a cardiomyopathy. He considered it most likely claimant's condition was simply the natural progression of the heart condition. The Board finds the heart attack claimant suffered was the result of a naturally progressing cardiomyopathy and was not caused by fumes or chemicals at work.

Conclusions of Law

1. K.S.A. 1987 Supp. 44-501(e) provides that the injury and disability from coronary or coronary artery disease is not compensable unless it is shown that the exertion at work which caused the condition is unusual:

Compensation shall not be paid in case of coronary or coronary artery disease . . . unless it is shown that the exertion of the work necessary to precipitate the disability was more than the employee's usual work in the course of the employee's regular employment.

2. If the heart attack is caused by an external force, and not by exertion, the provisions of K.S.A. 44-501(e) do not apply and the injury and disability may be compensable. Dial v. C. V. Dome Co., 213 Kan. 262, 515 P.2d 1046 (1973). Makalous v. Kansas State Highway Commission, 222 Kan. 477, 565 P.2d 254 (1977).

3. The Board concludes claimant's heart attack was not caused by exposure to fumes and therefore was not caused by an external force.

4. The Board finds claimant's heart attack was not the result of exertion at work or an external force but was instead the natural progression of cardiomyopathy and is not a compensable injury.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark on December 4, 1997, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Seth G. Valerius, Topeka, KS
Vaughn Burkholder, Wichita, KS
Steven L. Foulston, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director